UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,945	07/24/2003	Dennis J. Jones JR.	03269.0109U1	3664

23859 7590 12/02/2008

Ballard Spahr Andrews & Ingersoll, LLP
SUITE 1000
999 PEACHTREE STREET
ATLANTA, GA 30309-3915

EXAMINER	
OGDEN JR, NECHOLUS	
ART UNIT	PAPER NUMBER
1796	
MAIL DATE	DELIVERY MODE
12/02/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/627,945
Filing Date: July 24, 2003
Appellant(s): JONES, DENNIS J.

D. Brian Shortell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 2, 2008 appealing from the Office action mailed May 17, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,094,701	Fekete	6-1978
4,842,646	Gamblin	6-1989

5,738,688	De Lathauwer	4-1988
5,403,632	Gurley	4-1995
5,520,962	Jones	5-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 45 and 47-50 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Lathauwer (5,738,688).

2. De Lathauwer discloses a method of treating fibers or yarns comprising applying compositions containing tannic acid in an amount from 0.01 to 0.9% by weight of the acid content (col. 2, line 23) and potassium antimony tartrate (col. 3, lines 39-40). De Lathauwer further teaches that said composition may contain condensation products of sulphonated phenols (col. 2, lines 24-25) and polyacrylic acids (col. 3, line 23) and that the compositions have a pH of between 2.5 to 5.

De Lathauwer is silent with respect to the Gallic acid content.

It would have been obvious to one of ordinary skill in the art, absent a showing to the contrary, to optimize the Gallic acid content limitation of tannic acid because the prior art of record teaches and invites the inclusion of any commercial tannic acid. For it is held that "The normal desire of Scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382.

3. Claims 45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gamblin (4,482,646).

Gamblin discloses an ink or dye bath comprising 0.0001% by weight of tannic acid and 25 to 100% by weight of water (col. 3, lines 53-67).

Gamblin is silent with respect to the Gallic acid content.

It would have been obvious to one of ordinary skill in the art to optimize, absent a showing to the contrary, the Gallic acid content limitation of tannic acid because optimization of components is within the level of ordinary skill. Moreover, it is held that "The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382.

4. Claims 45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fekete (4,094,701).

5. Fekete discloses an aqueous composition for cleaning tin surfaces comprising tannic acid in an amount from 0.01% by weight and greater (see col. 3, lines 1-8 and examples).

Fekete is silent with respect to the Gallic acid content.

It would have been obvious to one of ordinary skill in the art to optimize, absent a showing to the contrary, the Gallic acid content limitation of tannic acid because optimization of components is within the level of ordinary skill. Moreover, it is held that "The normal desire of scientists or artisans to improve upon what is already generally

known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382.

6. Claim 51, 53, 70-76 and 78-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Lathauwer (5,738,688) in view of Jones, Jr. (5,520,962).

7. De Lathauwer is relied upon as set forth above. Specifically, De Lathauwer does not employ applicant's specific fluorochemicals.

8. Jones, Jr. discloses a method and composition for increasing the repellency on carpet and carpet yard comprising fluorochemicals in the amount from 0.0035 and 0.175 wt. of the solids (col. 3, lines 20-26).

Absent a showing to the contrary, It would have been obvious to one of ordinary skill in the art to incorporate the fluorochemicals taught by Jones, Jr. into the compositions taught by De Lathauwer because it is well known in the art to apply fluorochemicals coatings to nylon fabrics to provide stain repellency and De Lathauwer main objective is to improve stain resistance on fibers (see abstract).

9. Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Lathauwer et al (5,738,688) in view of Gurley (5,403,362).

10. Jones, Jr. is relied upon as set forth above.

11. Specifically, Jones, Jr. does not suggest stannous chloride as a component in his compositions.

12. Gurley teaches an improved mordant solution and process for preparing fibers for dyeing comprising mordant compounds such as tannic acid and stannous chloride (col. 1, lines 65-col. 2, line 20).

13. It would have been obvious to one of ordinary skill in the art to include and/or substitute the stannous chloride to the compositions of De Lathauwer e because Gurley teaches the equivalence of said stannous chloride and tannic acid as mordants for pre-treating fibers (col. 2, lines 46-49 and col. 3, lines 65-68). Moreover, De Lathauwer invites the use of mordant ingredients to improve discoloration (col. 1, lines 55-65) and/or increase the ability to fix the natural dyestuff, in the absence of a showing to the contrary.

(10) Response to Argument

Appellant argues that Gamblin, De Lathauwer, Fekete and/or Jones, Jr. do not suggest the Gallic acid content of the claimed invention.

The examiner contends that the Gallic acid content of the tannic acid components of the above listed prior art is silent, however, the burden is upon applicant to prove otherwise and it well known to the skilled artisan to optimize percentages, since Gallic acid is acquired by the hydrolysis of tannic acid it would have been within the level of the skilled artisan to arrive at the Gallic acid content absent a showing to the contrary commensurate in scope with the claimed invention. Moreover, by stating that any commercially available tannic acid can be used is a reasonable assumption that tannic acids of a range of Gallic acid contents could be employed in a beneficial or synergistic manner.

"The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382.

Appellant argues that the prior art of record does not recognize the result effectiveness of the Gallic acid content and thus cannot be optimized.

The prior art of record teaches that tannic acid is effective in treating/dyeing textiles or fabrics, which provides the skilled artisan sufficient motivation to recognize the effectiveness of tannic acid and its content of Gallic acid in textile treating/dyeing compositions and further, in the absence of a showing to the contrary commensurate in scope with the claimed invention, one of ordinary skill in the art would have been able to optimize the Gallic acid content

Appellant argues that there is no suggestion of a two-part treatment composition.

The examiner contends that applicant's claims are directed to a composition and the order of addition or combination bears no relevance.

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the references of

record are related to treatment compositions as suggested by the most comprehensive claim and said references comprise appellant's tannic acid and other ingredients. .

Appellant argues that the claims are non-obvious in view of the Jones Declaration.

The Declaration under 37 CFR 1.132 filed 2-26-2007 is insufficient to overcome the rejection of claims 45, 47-53 and 70-82 based upon De Lathauwer as set forth in the last Office action because:

Declarant assumes that the tannic acid of De Lathauwer is prepared by hydrolysis of the reaction scheme noted in the Advanced Organic Chemistry handbook and not some other method of forming said tannic acid that may result in low Gallic acid content as claimed. Moreover, Declarant does not test and compare the specific tannic acid as exemplified in the De Lathauwer working examples. Therefore, the Declaration is given little weight because criticality cannot be established and one of ordinary skill in the art would assume that since any available commercial tannic acid can be employed that those of low Gallic acid content are envisioned by the teachings of De Lathauwer.

Accordingly, it has been held that "An obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not. See KSR Int'l Co. v. Teleflex Inc., 550 U.S. __, 2007 WL 1237837, at *12 (2007) ("The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Necholus Ogden, Jr./

Primary Examiner, Art Unit 1796

Conferees:

/Harold Y Pyon/

Supervisory Patent Examiner, Art Unit 1796

/Gregory L Mills/

Supervisory Patent Examiner, Art Unit 1700